

October 2014



EU Supplement

This supplement covers the significant EU developments from February 2014 to September 2014 in the broad areas of social policy, consumer policy and citizens' rights.

There is further information about almost all the issues mentioned on the Europa website europa.eu. In some cases, we give the extended website address. The Official Journal of the EU may be accessed at eur-lex.europa.eu.

Employment and social policy

Posted workers

The Posting of Workers Enforcement Directive (Directive 2014/67/EU) was agreed in May 2014. It aims to provide for better and more uniform application and enforcement in practice of the original Posting Directive (Directive 96/71/EC), including measures to provide greater transparency and certainty in the administrative requirements and control measures applicable in individual member states. It must be brought into effect by June 2016.

The main elements of the new Directive are:

- It sets rules for raising the awareness of workers and companies about their rights and obligations
- It aims to improve co-operation between national authorities
- It clarifies the definition of posting
- It sets out the responsibilities of member states to verify compliance with the law
- It requires posting companies to comply with documentation requirements
- It provides for improvements in the enforcement of rights and the handling of complaints; for example, subcontractors may be made liable

Link: ec.europa.eu/social/posted-workers

Supplementary pension rights

The Directive on the acquisition and preservation of supplementary pension rights (2014/50/EU) for mobile workers (workers who move between member states) has been agreed. The Directive aims to improve the protection of mobile workers' rights under occupational pension schemes (these are known as "supplementary pensions").

It provides that pension rights should be vested (guaranteed) after three years of employment at the latest. When a minimum age for vesting is set, it must not be higher than 21 years. When leaving a scheme, a worker is entitled to keep the vested pension rights. The rights of workers who leave an employer-run pension scheme before retirement ("deferred beneficiaries") must be preserved and treated fairly compared to the rights of those workers who remain in the scheme, for example, as regards indexation. The Directive will come into effect in 2018.

The Directive also provides for better information provision to workers in these situations.

Link: ec.europa.eu/social/main.jsp?catId=468&langId=en

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Basic bank account

The Directive on the transparency and comparability of payment account fees, payment account switching and access to a basic payment account (2014/92/EU) has been agreed. It will come into force in 2016. Among other things, it provides that all EU consumers have the right to open a payment account that allows them to perform essential operations, such as receiving their pay, pensions and benefits and for payment of household bills. It also aims to make it easier to compare fees charged by different financial institutions and to switch accounts.

Link: ec.europa.eu/internal_market/finservices-retail/inclusion/index_en.htm

Occupational Pension Funds Directive

The Commission has published proposals for changes to the Occupational Pension Funds Directive 2003/41/EC (also known as the IORP Directive). This Directive sets out the basic requirements for occupational pension funds and their supervision, including rules which oblige occupational pension funds to invest their assets prudently. The proposed changes are aimed at improving the governance of pension schemes, regulating remuneration policy, enhancing the powers of the supervisors and better information for pension scheme members.

Link: ec.europa.eu/internal_market/pensions/index_en.htm

Youth Guarantee

The 18 Youth Guarantee pilot projects have been reviewed by the European Commission. There are two groups of projects:

- Projects targeting young people in the final stages of secondary education or training and aiming to help them to make the transition from school to a job, further education and/or training
- Projects targeting young people not in education, employment or training (NEETs) and aiming to provide them with supported pathways into education, training or employment

The Ballymun Youth Guarantee pilot project is part of the second group. The review shows that 316 young jobseekers attended interviews with the public employment service advisers during the first four months of the project. Of these, 75 received an offer of work experience or employment and 63 accepted the offer. Another 121 jobseekers received an offer of education or training and 89 people accepted this.

Local and national partnerships were set up, with the local implementation group responsible for delivering the project on the ground while the national one has the responsibility for drawing up policy recommendations.

Website: youthguarantee.ie

Health

Accessing health services in EU member states

The rules about accessing healthcare in other EU and EEA member states and Switzerland were described in the April 2014 issue of *EU Supplement*. The cross-border Directive described there has now been put on a statutory basis by the European Union (Application of Patients' Rights in Cross-Border Healthcare) Regulations 2014 (SI 203/2014).

Consumer

EU Consumer Programme 2014–2020

The EU Consumer Programme 2014–2020 has a budget of almost €189 million. The programme aims to help address four main consumer issues:

- **Safety:** the programme aims to reinforce co-ordination between national enforcement authorities and to address the risks linked to the globalisation of the production chain
- **Consumer information and education:** in particular, the emphasis will be on information and education on the rights of consumers in cross-border transactions
- **Consumer rights and effective redress**
- **Strengthening enforcement cross-border:** this will mainly involve increasing awareness about the network of European Consumer Centres among consumers and improving the network's effectiveness

The programme is aimed at national authorities in charge of consumer policy, safety and enforcement; the network of European Consumer Centres; EU-level consumer organisations; and national consumer organisations.

Link: ec.europa.eu/consumers/strategy-programme/financial-programme/index_en.htm

Consumer Rights Directive

The Directive on Consumer Rights (2011/83/EU) came into effect on 13 June 2014. It was given effect in Ireland by the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (SI 484/2013).

The Directive and Regulations, which apply to most consumer contracts:

- Specify the substance and form of the information that traders must provide to consumers before consumers are bound by on-premises, off-premises or distance contracts
- Give consumers the right to cancel off-premises and distance contracts within fourteen days of the delivery of

the goods in the case of sales contracts and fourteen days of the conclusion of the contract in the case of service contracts

- Regulate the fees charged by traders in respect of the use of certain means of payment, the cost of calls by consumers to customer helplines, and payments by consumers additional to the remuneration agreed for the trader's main obligation under the contract
- Ban pre-ticked boxes on websites
- Amend the provisions of the Sale of Goods Act 1893 on the passing of risk, and certain of the Act's rules on delivery, in contracts of sale where the buyer deals as consumer

Link: ec.europa.eu/justice/consumer-marketing/rights-contracts/directive/index_en.htm

Unfair terms in consumer contracts

The European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2014 (SI 336/2014) give further effect to Directive 93/13/EEC on Unfair Terms in Consumer Contracts. The Regulations make the Commission for Communications Regulation an "authorised body" for the purposes of the Directive. This means that the Commission may apply to the Circuit Court or the High Court for a declaration or an injunction for the purposes of enforcing the Regulations.

Timeshare

The European Communities (on the Protection of Consumers in respect of certain aspects of Timeshare, Long-term Holiday Product, Resale and Exchange Contracts) (Amendment) Regulations 2014 (SI 400/2014) came into effect on 8 September 2014.

Alternative dispute resolution

The Department of Jobs, Enterprise and Innovation has published a consultation paper on the implementation of EU Directive on Consumer Alternative Dispute Resolution (Directive 2013/11/EC) and the EU Regulation on Consumer Online Dispute Resolution (Regulation 524/2013). The Directive must be brought into national law by member states by 9 July 2015 and the Regulation will apply directly from 9 January 2016.

The Directive requires that consumers be able to access alternative dispute resolution (ADR) procedures for domestic and cross-border disputes. Qualified ADR entities must resolve disputes within 90 days and ADR procedures should be free of charge or of moderate costs for consumers. The Directive requires all traders to inform customers about ADR entities or schemes which cover the trader's sector and whether or not the trader subscribes to those ADR schemes.

The Regulation creates a European online platform which takes the form of an interactive website which will provide a single point of entry for consumers and traders seeking to resolve cross-border disputes out-of-court concerning online sales/service contracts.

Link: www.djei.ie/commerce/consumer/issues.htm

Justice and Home Affairs

Data protection: the "right to be forgotten"

The European Court of Justice made a ruling in the Google Spain case on 13 May 2014 (Case 131-12, Link: curia.europa.eu/juris/liste.jsf?num=C-131/12)

The Court found that, when a search engine operator searches for and presents personal information, such an operator collects data within the meaning of the 1995 Data Protection Directive (95/46 EC). This means that the operator is a data controller and the subject of the data has rights under the Directive including the right to have certain personal data erased. This case was taken by a private individual. The Court found that he had the right to have links to personal information about him erased. This information concerned financial difficulties he had experienced 16 years earlier. The Court held that this information was now irrelevant and out of date and there did not appear to be any overriding public interest in this case in having continued access to links to the personal information concerned. In general, the data subject's right to have this information erased overrides the economic interests of the search engine operator and the interest of the general public in having access to that information. However, that would not be the case if it appeared, for particular reasons, such as the role played by the data subject in public life, that the interference with his fundamental rights is justified by the preponderant interest of the general public in having access to the information in question.

The Court recognised that the removal of such links could, depending on the nature of the information concerned, have an impact on the legitimate interest of internet users interested in having access to the information. In effect, the "right to be forgotten" is not absolute. In such cases, the Court held that a fair balance should be sought between the legitimate interest of internet users and the rights of the data subject. Other rights such as freedom of expression and the freedom of the media also have to be taken into account.

Negotiations have been going on at EU level on data protection changes for the past few years. It is expected that a framework directive will be agreed in 2015.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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Data Retention Directive

The European Court of Justice has ruled (in cases C-293-12 and C-594/12) that the Data Retention Directive (Directive 2006/24/EC) is invalid. (See *Relate*, March 2010 for more information on data retention).

This Directive required that phone operators and internet service providers retain information about telephone calls and internet use and that they make it available on request for the detection, investigation and prosecution of serious crime. The Court has ruled that the data concerned may provide very precise information on the private lives of the people whose data are retained, such as the habits of everyday life, permanent or temporary places of residence, daily or other movements, activities carried out, social relationships and the social environments frequented. The Court takes the view that, by requiring the retention of those data and by allowing the national authorities to access those data, the Directive interferes in a particularly serious manner with the fundamental rights to respect for private life and to the protection of personal data. The fact that data are retained and subsequently used without the subscriber or registered user being informed is likely to generate in the people concerned a feeling that their private lives are the subject of constant surveillance.

This Directive was brought into Irish legislation by the Communications (Retention of Data) Act 2011. The fact that the EU Directive has been declared invalid means that it no longer has effect but that does not prevent each member state from having its own rules on data protection and will not necessarily require any major change to the Irish law.

Exchange of information on traffic offences

The European Court of Justice (Case C-43/12) has annulled the Directive on cross-border exchange of information on road safety related traffic offences (Directive 2011/82). The Court held that it had been agreed on an incorrect legal basis.

The Directive allowed for the exchange of information between member states in relation to eight road traffic offences (speeding, non-use of a seat-belt, failing to stop at a red traffic light, drink-driving, driving under the influence of drugs, failing to wear a crash helmet, use of a forbidden

lane and illegally using a mobile telephone). However, the Court ruled that the Directive may remain in force for a year in order to allow for the introduction of a similar directive on a correct legal basis.

Ireland and opt-ins

Ireland has not opted in to the European Investigation Order (EIO) Directive which was agreed in March 2014 and is due to come into effect in 2017 or to the proposed establishment of a European Public Prosecutor's Office.

Ireland has opted in to the Regulation on the establishment of Eurodac (recast) and for the effective application of the Dublin Regulation.

Asylum

In June 2013, recasts of the Directives dealing with Reception Conditions, Procedures and Qualification for asylum seekers were agreed. Ireland did not opt-in to the 2003 Reception Conditions Directive or its 2013 version.

Ireland did opt-in to the 2004 Qualification Directive and the 2005 Procedures Directive but has not opted in to the recast of either of these measures. Among other things, the Procedures Directive requires certain matters to be completed within six months.

Citizens Information 

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